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October 20, 1994

BY HAND

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. Room 222  
Washington, D.C. 20554

Re: Broadband and Narrowband Personal  
Communications Services  
GEN Docket No. 90-314; ET Docket 92-100

Dear Mr. Caton:

In the proceedings captioned above, certain limited partnerships affiliated with the Morgan Stanley Group Inc.<sup>1/</sup> filed petitions seeking reconsideration of the Commission's "multiplier" rule, as it is applied to entities holding indirect ownership interests in broadband and narrowband personal communications services ("PCS") licensees.<sup>2/</sup> These petitions sought relief for insulated limited partners from the attribution rules, a higher attribution threshold for institutional investors, and certain other modifications to the Commission's rules.

<sup>1/</sup> The Morgan Stanley Leveraged Equity Fund II, L.P.; Morgan Stanley Capital Partners III, L.P.; Morgan Stanley Venture Capital Fund L.P.; and Morgan Stanley Venture Capital Fund II, L.P. (collectively, "the Morgan Stanley Partnerships").

<sup>2/</sup> Filed September 7 and October 7, 1994.

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In addition to the matters discussed in these petitions, the Morgan Stanley Partnerships point out that there is precedent for the proposed treatment of insulated limited partners in the Securities Exchange Act of 1934<sup>3/</sup> (the "Exchange Act") and its implementing regulations.<sup>4/</sup> Sections 13(d) and 13(g) of the Exchange Act require that any shareholder report "beneficial ownership" of more than five percent of any class of publicly-traded voting stock. Rule 13d-3, promulgated pursuant to Section 13(d), defines a "beneficial owner" as any person who has or shares: (i) power to vote or direct the voting of such securities; or (ii) power over the disposition of the securities. Typically, under this rule, general partners of limited partnerships are deemed to own beneficially all of the limited partnership's securities; limited partners are deemed to own none.<sup>5/</sup> The central modification to the PCS attribution rules proposed by the Morgan Stanley Partnerships -- non-attribution of insulated limited partners -- is entirely consistent with this approach.

It is also instructive that the 13(d) reporting requirements of the Exchange Act respect the clear differences between active and passive investors, and impose distinct requirements upon each. Active investors, which must report pursuant to Schedule 13D, face more stringent reporting requirements than do certain institutional investors (governed by Schedule 13G),<sup>6/</sup> because of the latter's traditionally passive investment intent. For similar reasons, the Commission should consider the Morgan

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<sup>3/</sup> 15 U.S.C. chapter 2B.

<sup>4/</sup> In the broadcast context, the Commission has looked to the disclosure requirements of the Securities and Exchange Commission for guidance in fashioning its attribution rules. See Report and Order 97 FCC.2d 997, ¶¶ 16-17, FCC 84-115 (released Apr. 30, 1984).

<sup>5/</sup> The same definition of "beneficial owner" applies in determining whether a 10% shareholder is subject to transaction reporting under Section 16 of the Exchange Act.

<sup>6/</sup> Among the investors accorded more lenient treatment are most pension plans and endowment funds, the principal investors in the Morgan Stanley Partnerships.  
17 C.F.R. § 240.13d-1(b)(1)(ii)

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Stanley Partnerships' proposed relaxation of the PCS attribution standard for certain institutional investors.

In summary, the disclosure requirements of the Exchange Act apply only to those persons who have either the power to vote or dispose of securities. Likewise, the Exchange Act reporting regime recognizes that certain institutional investors should be treated differently from those investors that seek an active role in the management and operation of the companies in which they are invested. The Morgan Stanley Partnerships urge the Commission to recognize the distinct character of these investors as well, and to modify the PCS attribution rules accordingly.

Respectfully submitted,

By:



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Jon C. Garcia

Attorneys for the  
Morgan Stanley Partnerships